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Irregular Migration and Human Rights:  
Tajik Irregular Migrant Workers in  
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# Summary

This thesis deals with irregular labour migration and human rights and analysis this issue in the case of Tajik irregular migrant workers in Russian Federation. The focus is on the examination of the human rights protection offered to regular and irregular migrant workers at international, national and regional levels. The case of Tajik irregular migrant workers in Russia is examined in order to reveal the level of protection offered by national and regional instruments to migrant workers from Tajikistan.

Followed by an introduction to the irregular migrant situation, as it stands today in the CIS countries, the author discusses in chapter 2 the human rights instruments applicable to regular and irregular migrant workers. The human rights protection offered at the UN and CIS levels is examined in this chapter. The national legislations of Tajikistan and Russia in regards to protection of migrant workers are also examined.

Chapter 3 deals with the situation of Tajik irregular migrant workers in the Russian Federation. The Tajik-Russian case study was chosen for two main reasons: First, the majority of Tajik migrant workers choose Russia as their destination country. Second Russia's punitive approach to migration policy and the vulnerability of Tajik migrant workers there, makes it a place where the human rights violations of Tajik migrant workers occur.

Chapter 4 examines the situation of migrant workers in Kazakhstan as another country attracting migrants from Tajikistan. The focus is on analysing the national legal system of Kazakhstan in the field of migration and comparing the situation of irregular migrants in Kazakhstan and Russia.

# Preface

I would like to express my respect and sincere gratitude to my supervisor, Professor emeritus Göran Melander, for his guidance and support.

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I acknowledge the support and help of my family, without whose love, encouragement and assistance, I would not have finished this thesis.

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Last, but not least, I thank all the people who assisted me in gathering respective materials for this thesis, especially the staff at NGO 'Migration and Law' in Russian Federation and experts on migrant workers issues in Tajikistan.

# Abbreviations

Art.	Article
CMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child
CIS	Commonwealth of Independent States
EURASEC	Eurasian Economic Community
E.g.	Exempli gratia
FMS	Federal Migration Service
FL	Federal Law
ILO	International Labour Organization
IOM	International Organization for Migration
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
Ibid.	Ibidem
MoI	Ministry of Interior
No.	Number
p.	Page
pp.	Pages
RF	Russian Federation
UN	United Nations

# 1 Introduction

*'According to the ILO, there are between 3.5 and 5 million migrants currently employed in the informal labour market in the Russian Federation, particularly in industry, construction and agriculture. These migrants mainly originate in countries of the Commonwealth of Independent States and South-East Asia.'*<sup>1</sup>

Irregular labour migration has become a key issue for a number of CIS<sup>2</sup> countries over the past decade. Many experts consider irregular movement of migrants within the CIS region to be increasing and most probably intensifying in the future<sup>3</sup>.

When the former Soviet republics became independent in 1991, their primary focus was on nation building and securing their boundaries. In exercising their sovereign right to legislate for everyone within their territories, the leaders of these states began to exclude foreigners although such policy cut traditional ties of families and work across borders in the region. The limitations of freedom of movement, toughening border controls, and restricting migration policies aimed at preventing unwanted migration in the name of national security and stability.

In the majority of cases the migratory movements within the region are economically motivated. Factors such as economic crises, unemployment and low living standards in the CIS states make people search for jobs outside their home countries. Within the CIS region the main destination countries of labour migration are the Russian Federation and the Republic of Kazakhstan<sup>4</sup>. These two countries attract migrant workers from other CIS countries, including those from poorer countries of Central Asia.

However, what characterises the migrant receiving countries within the region, are their extensive sectors of shadow labour markets and lack of coordination with migrant sending countries in regulation of migration flows. Furthermore numerous administrative barriers to legal employment, large-scale corruption among executing structures and disregard of the

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<sup>1</sup> Global Commission on International Migration's Report *'Migration in an interconnected world: New directions for action'*, 5 October 2005,

<http://www.geim.org/attachements/gcim-complete-report-2005.pdf>

<sup>2</sup> The four Central Asian Republics – Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan together with Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova, the Russian Federation and Ukraine make up the Commonwealth of Independent States. Turkmenistan discontinued permanent membership as of August 26, 2005, and is now an associate member.

<sup>3</sup> *Overview of the Migration Systems in the CIS Countries, 2005*, p.11,

<http://www.icmpd.org/default.asp?nav=home&folderid=-1&id=543>

<sup>4</sup> Russia became the major destination country for migrant workers from other CIS countries because of its economic developments. Republic of Kazakhstan, with its dynamic economic reforms in the beginning of 2000 and as oil producer, has become another country in the region attracting migrant workers.

international human rights instruments protecting aliens, combined with their imperfect legislations lead to violations of the human rights of migrant workers. Irregular migrant workers are the most vulnerable to exploitation and discrimination in labour relations. For example, the unofficial employment of migrant workers leads to low payment, poor working conditions, etc. Migrant workers, both regular and irregular, face corruption and fraud at the very beginning of the migration process, meaning when they are recruited by recruitment agencies and continuing when crossing borders, seeking employment, receiving payment for labour, and when sending remittances. Unfortunately, this situation favours the business of “human traffickers” and various criminal groups.

## 1.1 Tajikistan as migrant sending country

*According to the World Bank ‘...Tajikistan is the poorest and among the most fragile of the Commonwealth of Independent States (CIS) countries. The country is burdened with failing infrastructure, tenuous health and education systems, and weak institutions. The average monthly salary is slightly above US\$20 (2004) and unemployment remains high. Over two thirds of the population continues to live on less than \$2.15 a day’<sup>5</sup>.*

Given the high level of unemployment and rapid population growth as well as the low level of GDP per capita in the country, Tajikistan became and remains one of the countries exporting labour force. The emigration from Tajikistan has been connected not only to the decline in its economy but also to the civil war, which occurred in the country’s first years of independence<sup>6</sup>. Hundreds of Tajikistani inhabitants fled to the neighbouring countries, such as Afghanistan, Kazakhstan, Kyrgyzstan and to the Russian Federation as refugees or externally displaced persons. Furthermore having been refused the refugee status, these groups built the migration nets in the host countries.

The vast majority of Tajik migrant workers choose Russian Federation as their destination country. As most of them find themselves with irregular administrative status in the host country, they become victims of various human rights and labour rights violations. For example, Tajik irregular migrant workers usually have the lowest paid jobs in Russia, are fired and expelled at any time, and are often poorly treated by their employers and local authorities, without refuge to any legal protections.

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<sup>5</sup> World Bank, Country Brief 2005,

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/TAJIKISTANE/XTN/0,,menuPK:287257~pagePK:141132~piPK:141107~theSitePK:258744,00.html>

<sup>6</sup> Tajikistan gained its independence in 1991, following the collapse of the USSR. In 1992 a civil war began in Tajikistan, which ended in 1997 after the peace accord was signed between the Government and the Islamic opposition group. See L. Jonson (ed.), *The Tajik War. A Challenge to Russian Policy* (Royal Institute of International Affairs, London, 1998) p. 1.

Yet, for Tajikistan the irregular migrants' remittances as contribution to the national economy and to the incomes of many families are crucial. In fact, it is the contribution of the labour migration that helped the population to survive during the first years of independence and still continues to help the country to manage its economy.

## 1.2 The concept of irregular migration in the context of CIS countries

There is no universally accepted definition of irregular migration<sup>7</sup>. The destination countries see irregular migration as illegal entry, stay or engagement in economic activities in a country, meaning that the migrant lacks required authorization or documents to enter, reside or work in a given country.

The sending countries find migration irregular when, for example, a person crosses an international border without valid documents or does not fulfill the administrative requirements for leaving the country.

In literature irregular migration is sometimes referred to as clandestine, illegal, unauthorised or undocumented migration<sup>8</sup>. The term 'irregular' was recommended by the International Symposium on Migration in Bangkok in April 1999 and then by the International Labour Office on its 2004 International Conference in Geneva<sup>9</sup>.

There are several reasons for choosing the term 'irregular' instead of the terms 'illegal', 'undocumented' or 'unauthorised'. First of all, the definition of 'irregularity' best describes the complexity of the phenomenon. Second, the term irregular migration implies political correctness and avoids connecting illegality with criminality<sup>10</sup>. The term 'illegal' criminalizes migrants who find themselves in an irregular situation and even disqualifies them as human beings<sup>11</sup>. The term 'undocumented' is considered being broad and '*... sometimes used to denote migrants who have not been documented (or recorded), and sometimes to describe migrants without documents (passports etc.)*'<sup>12</sup>. The term 'unauthorised' is also not

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<sup>7</sup> E. Guild 'Who is an irregular migrant?' (2004) in B. Bogusz, R. Cholewinski, A. Cygan and E. Szyszczak (eds), *Irregular Migration and Human Rights; Theoretical, European and International perspectives* (Martinus Nijhoff, 2004) p. 3

<sup>8</sup> K. Koser, 'Irregular migration, state security and human security', <http://www.gcim.org/attachements/TP5.pdf>

<sup>9</sup> The Bangkok Declaration on Irregular Migration, <http://www.thaiembdc.org/info/bdim.html>

<sup>10</sup> R. Cholewinski 'European Policy on Irregular Migration' in B. Bogusz, R. Cholewinski, A. Cygan and E. Szyszczak (eds), *Irregular Migration and Human Rights; Theoretical, European and International perspectives* (Martinus Nijhoff, 2004) p. 160

<sup>11</sup> K. Groenendijk. Introduction in B. Bogusz, R. Cholewinski, A. Cygan and E. Szyszczak (eds), *Irregular Migration and Human Rights; Theoretical, European and International perspectives* (Martinus Nijhoff, 2004) p. XIX

<sup>12</sup> K. Koser, 'Irregular migration, state security and human security', <http://www.gcim.org/attachements/TP5.pdf>

universally accepted because ‘... *not all irregular migrants are necessarily unauthorised*’<sup>13</sup>.

In the context of CIS countries, the term ‘*illegal labour migration*’ is a complex one. Most labour experts in these countries consider the term ‘*illegal worker*’ non-identical with the term ‘*illegal migrant*’<sup>14</sup>. Almost all CIS countries (except Turkmenistan with all countries, Russia with Georgia, and Uzbekistan with Kyrgyzstan and Tajikistan) have agreed on visa-free regime. Thus migrant workers enter the destination country legally. However, in the destination country migrants start working without work permission or without an employment contract, sometimes violating the registration rules of the destination country, and therefore falling into the category of migrant workers with irregular administrative status<sup>15</sup>.

The ILO definition describes the ‘*migrants with undetermined status*’ as ‘*People who are staying in a state other than their own and who do not fully meet the requirements of this state regarding entry, stay or economic activity on the territory of the given state.*’<sup>16</sup> This definition is considered to be the most relevant one in the case of the CIS region.

In this thesis, the term ‘*irregular migrant*’ is used.

### 1.3 Methodology

This thesis consists of four chapters. Introduction numbered as Chapter I overviews the issue of irregular labour migration at CIS level.

Chapter II analyses the international human rights instruments protecting migrant workers. Legal instruments at UN and CIS levels related to the protection of migrant rights together with the ILO Standards are also considered in Chapter II. The national systems of Tajikistan and recipient countries, namely Russia, for protection of migrant workers rights will be analysed here. Bilateral and multilateral agreements signed between the CIS countries are touched upon in this chapter. Russia’s laws “On the Legal Status of Foreign Citizens in the Russian Federation” and “On Citizenship” are analysed in Chapter II.

Chapter III considers the situation of Tajik migrant workers in Russia. Mainly the vulnerability of Tajik irregular migrants to exploitation in Russia is analysed.

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<sup>13</sup> Ibid.

<sup>14</sup> IOM with Sharq Scientific Research Centre, ‘*Labour Migration from Tajikistan*’, July 2003, [http://www.tcc.iom.int/iom/images/uploads/tajikistan\\_1071229382.pdf](http://www.tcc.iom.int/iom/images/uploads/tajikistan_1071229382.pdf)

<sup>15</sup> IOM with Sharq Scientific Research Centre, ‘*Labour Migration from Tajikistan*’, July 2003. [http://www.tcc.iom.int/iom/images/uploads/tajikistan\\_1071229382.pdf](http://www.tcc.iom.int/iom/images/uploads/tajikistan_1071229382.pdf)

<sup>16</sup> Ibid.

Chapter IV considers the status of Tajik migrant workers in Kazakhstan. This chapter focuses on comparing the situation of migrant workers in Russia and Kazakhstan. The national legislation of Kazakhstan in the field of migration is analysed in this chapter.

## **1.4 Sources**

The present thesis is based on literature, primary and secondary sources including governmental reports, articles and researches in the field of irregular migration. The author has generally relied on legal documents and academic literature but also on discussions and interviews with academicians and migrants' rights experts, Tajik and Russian state practitioners as well as migrant workers themselves.

The universal and to some extent regional human rights instruments are covered in this thesis to show the protection offered to regular and irregular migrants.

In doing the research the author used English language sources more extensively but also Tajik and Russian language sources, especially concerning the legislation of both countries.

# 2 Legal Framework

## 2.1 International Instruments

### 2.1.1 UN human rights treaties

Protection of migrant workers is very little addressed by the labour policies and laws of migrant receiving countries. Migrant workers including those with irregular status can be protected in receiving countries only through the observance of international instruments. It is necessary to look at the human rights instruments whose provisions are applicable to all human beings, and therefore, also to migrants.

The seven core human rights instruments, namely the ICCPR of 1966 and the ICESCR of the same year, CERD, CEDAW, CAT, CRC and CMW recognize the human rights of all people. Although these instruments (except of CMW) do not explicitly recognize the rights of migrant workers, it is generally assumed that the principle of equality and non-discrimination which is laid down in these treaties are part of customary law, and must be observed by all states and guaranteed to all persons within their territory<sup>17</sup>. In respect of fundamental rights (the right to life, freedom from torture and inhuman treatment, freedom from slavery and servitude, non-applicability of retroactive law, right to recognition as a person before the law, and the right to freedom of thought, conscience and religion) the human rights regime recognizes no distinction between the nationals and non-nationals<sup>18</sup>. Moreover, these fundamental rights constitute *jus cogens*<sup>19</sup>, therefore states are not permitted to derogate from them even in time of public emergency, that threatens the life of the nation.

Irregular migrant workers are also entitled to enjoy the fundamental rights. The irregularity of their status should not be a reason to derive them from enjoying these rights. The states still have a duty under international law to protect irregular migrant workers fundamental rights without discrimination. However irregular migrants should also enjoy other rights than those listed above, for example the right to health care, social security and education<sup>20</sup>.

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<sup>17</sup> Report on the human rights of migrants submitted by the Special Rapporteur on the Human Rights of Migrant Workers (2004) p. 11, <http://www.unhchr.ch/huridocda/huridoca.nsf/FramePage/migrants%20En?OpenDocument&Start=2.13&Count=15&Expand=2>

<sup>18</sup> G. Gill 'International law and Human Rights: trends concerning International migrants and Refugees' (1990) International Migration Review, pp. 526, 536-537.

<sup>19</sup> Under Article 53 of the 1969 Vienna Convention on the Law of Treaties, a *jus cogens* norm is: 'a norm accepted and recognised by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.'

<sup>20</sup> 'In the US in 1982 for example, the Supreme Court ruled that the children of illegal immigrants were legally entitled to education since the Constitution provides equal protection under the law to all persons be they citizens or aliens. They can be entitled to

This is particularly the case for Tajik migrants who enter Russian Federation legally and therefore are entitled to rights and freedoms alongside the Russian citizens.

The most significant development in the protection of migrants' rights, including irregular migrant workers, is the 1990 CMW. The preamble to the CMW states '*the rights of migrant workers and members of their families have not been sufficiently recognized everywhere and therefore require appropriate international protection.*'<sup>21</sup> The CMW instrument lays down basic rights, which should be enjoyed by all persons employed outside their state of nationality. With the adoption of this instrument, international community made a significant progress as to the protection of irregular migrant workers. However, the migrant sending countries rather than migrant receiving countries has ratified the CMW. In the CIS region only Azerbaijan, Kyrgyzstan and Tajikistan<sup>22</sup> have ratified the Convention.

According to the report 'The Protection of the Rights of Migrants Workers in the Countries of Central and Eastern Europe and the CIS and Perspectives of Joining the 1990 UN Convention' among the main obstacles to ratification of the CMW in the region are:

**Economic reasons** (*the lack of resources for ensuring the implementation of the Convention's requirements, high demand for a cheap labour, stimulated by a wide expansion of "shadow" economic practices and corruption*);

**Legal reasons** (*difficulties in reforming national legislation*);

**Institutional reasons** (*the absence of necessary institutes for a qualitative implementation of the Convention's norms, expansion of "shadow" practices and institutions, bad coordination of activities between agencies and states*);

**Moral and ethical reasons** (*a low level of tolerance in society towards migrants, low sense of justice of citizens*);

**Political reasons** (*abuse of migration issues for political purposes.*)<sup>23</sup>

Therefore in analysing the human rights of irregular migrants in receiving countries, which have not ratified it, the CMW is of no relevance.

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medical aid. In Japan even illegal workers are entitled to compensation for accidents at work, and though they may not officially be entitled to medical treatment they often get it anyway'. See P. Stalker, '*The work of strangers: A survey of international labour migration*', pp.67-68.

<sup>21</sup> The Steering Committee of the Global Campaign for the Ratification of the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, <http://www.migrantsrights.org>

<sup>22</sup> Azerbaijan ratified the CMW on 11 January 1999, Republic of Tajikistan ratified the CMW on 8 January 2002, and Republic of Kyrgyzstan ratified the Convention on 29 September 2003. See Status of ratification of the CMW, <http://www.ohchr.org/english/countries/ratification/13.htm>

<sup>23</sup> '*The protection of the rights of migrant workers in the countries of Central and Eastern Europe and the CIS and perspectives of joining the 1990 UN Convention*', <http://www.december18.net/web/docpapers/doc1805.pdf>

## 2.1.2 Human rights treaties ratified by Central Asian countries and Russian Federation

All Central Asian countries with the exception of Kazakhstan had formally acceded to the major six UN human rights treaties, including the ICCPR and the ICESCR by 1999. Kazakhstan finally ratified both Covenants in 2006<sup>24</sup>.

It is important to note that the countries of Central Asia allow individual communications under UN human rights treaties. Kyrgyzstan, Tajikistan, Uzbekistan and Turkmenistan have already recognized the jurisdiction of the UN Human Rights Committee by also acceding to the Optional Protocol to the ICCPR.

Russia is a signatory or successor to the obligations of the key international human rights treaties, such as the ICESCR, ICCPR, and the Effective Protocols to them, the ICERD, CEDAW and CRC. Russia as a major migrant receiving country, however, has not ratified the CMW.

## 2.2 ILO Standards on migrants' rights

The International Labour Organization has long before the UN acknowledged the need for protection of migrant workers, who are vulnerable to hostility and exploitation in the receiving countries. ILO produced numbers of legal documents, including conventions and recommendations in order to benefit migrant workers. Among these legal documents, the following are the most important:

1. International Labour Organization Migration for Employment Convention (Revised), 1949 (No. 97);
2. International Labour Organization Discrimination (Employment and Occupation) Convention, 1958 (No. 111);
3. International Labour Organization Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143);
4. Equal Remuneration Convention, 1951 (100) among others.

The difficult situation of irregular migrant workers was clearly showed with the adoption of the ILO Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No.143)<sup>25</sup>.

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<sup>24</sup> Status of ratification of ICCPR and ICESCR,  
<http://www.ohchr.org/english/countries/ratification/4.htm>

<sup>25</sup> L. Bosniak, 'Human Rights, State sovereignty and the protection of undocumented migrants under the International Migrant Workers Convention' (2004) in B. Bogusz, R. Cholewinski, A. Cygan and E. Szyszczak (eds), *Irregular Migration and Human Rights; Theoretical, European and International perspectives* (Martinus Nijhoff, 2004) p. 312

The aforementioned Convention affirms in Article 1 that *'Each Member for which this Convention is in force undertakes to respect the basic human rights of all migrant workers.'*<sup>26</sup> Notably, the same Convention stipulates that migrant workers shall not be recorded as in an illegal or irregular situation in a host country just because of loss of employment. In the case of threatened expulsion, the migrant worker must enjoy the right of appeal unless considerations of national security or public order dictate otherwise.

A number of provisions in the Convention intend to ensure that migrant workers have a basic level of protection even if they have immigrated or are employed illegally and their situation cannot be regularised. The Convention stipulates that migrant workers in an irregular situation shall have the same rights as regular migrant workers concerning social security rights arising out of past employment. This provision must in particular be understood for the purpose of acquiring rights to long-term benefits. Paragraph 34 (1)(b) of Recommendation No. 151, which accompanies Convention No. 143, recommends that migrant workers, irrespective of their legal status, who leave the country of employment should be entitled to benefits which may be due in respect of any employment injury suffered.

However the Convention leaves it to the sovereign powers of each member state to regulate the enter and stay of foreigners in their territories and to determine the ways it intends to organise the potential entry of migrant workers or the refusal of their entry.

Within the CIS region, Russian Federation has ratified the ILO Forced Labour Convention (No. 29), ILO Abolition of Forced Labour Convention (No. 105) among others. However Russia did not ratify the ILO International Labour Organization Migration for Employment Convention (Revised), 1949 (No. 97), ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); and ILO Recommendations on Migrant Workers No. 86 and No. 151).

## **2.3 The 1995 CIS Convention**

On 26 May 1995 the Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States<sup>27</sup> (CIS Convention on Human Rights) was opened for signature in Minsk, Belarus. Countries like Armenia, Belarus, Georgia, Kyrgyzstan, Moldova, Russia and Tajikistan signed it on the mentioned day. Since then it has been ratified by the Russian Federation, Tajikistan and Belarus, and entered into force on 11 August 1998.

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<sup>26</sup> C 143 Migrant Workers (Supplementary Provisions) Convention, 1975, <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C143>

<sup>27</sup> Human Rights Law Journal, Vol. 17, 3-6 (1996)

The Human Rights Commission of the CIS (the CIS Commission) is established as the control mechanism of the CIS Convention on Human Rights. The CIS commission monitors the implementation of the CIS Convention on human rights and issues recommendations to that end. The members of the commission are appointed representatives of the states parties.

The CIS Convention offers a minimum of human rights protection to the members of the CIS<sup>28</sup>. Article 20 of the Convention states that *'All people are equal before the law and have the right to equal protection of the law without discrimination of any kind. Enjoyment of the rights and freedoms set forth in this Convention are guaranteed without discrimination on any grounds such as sex, race, colour, language, religion, political or other convictions, national or social origin, membership of a national minority, property or official status, place of birth or other circumstance'*. The provisions of the CIS Convention provide human rights protection for lawfully residents in each of the state party to the Convention. Article 22 of the Convention, for example, states: *'1. Everyone who is lawfully within the territory of any Contracting Party shall, within that territory, have the rights to liberty of movement and freedom to choose his residence. 2. Everyone shall be free to leave any country, including his own. 3. No restriction shall be placed on the exercise of the rights set out in paragraphs 1 and 2 of this Article other than such as are prescribed by the law in the interests of national security or public safety, public order, public health or morals or for the protection of the rights and freedoms of others. 4. The rights set forth in paragraph 1 of this Article may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest'*. Further, Art. 25 states: *'1. No one shall be expelled, under an individual procedure or as a result of a collective measure, from the territory of the State of which he is a citizen. 2. No one shall be deprived of the right to enter the territory of the State of which he is a citizen. 3. Aliens who are lawfully in the territory of any Contracting Party may be expelled only in application of a lawful decision, and they shall have the opportunity of appealing against their expulsion. 4. Collective expulsion of aliens shall be prohibited'*.

Irregular migrant workers are largely excluded from the scope of the CIS Convention's protection.

## **2.4 Regional Agreements within the CIS**

### **2.4.1 Bishkek Agreement**

In October 1992 the twelve members of the CIS signed the agreement 'Concerning visa-free movements of CIS citizens over the territories of CIS

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<sup>28</sup> The CIS Convention on Human Rights and Fundamental Freedoms, <http://hei.unige.ch/~clapham/hrdoc/docs/CIS%20convention.doc>

member states' (known as Bishkek Agreement). The Bishkek Agreement guarantees in Article 1 the right of free entry, departure and movement within the territory of all countries of the CIS to citizens of every state of the Commonwealth. However, in July 1999 Turkmenistan withdrew from the accord and Uzbekistan suspended the agreement in January 2000. In August 2000 Russia withdrew from the Bishkek Agreement preferring instead to negotiate bilaterally or sign agreements with other CIS members.

## **2.4.2 EURASEC**

With the establishment of Eurasian Economic Community (EURASEC), the visa free regime became possible among some of the CIS countries. The EURASEC was established on 10<sup>th</sup> October 2000 in the capital of the Republic of Kazakhstan, Astana when Belarus, Kazakhstan, Kyrgyzstan, Russia and Tajikistan signed the constitutive treaty. EURASEC was formally created when the treaty was finally ratified by all five-member states in May 2001. Moldova and Ukraine gained status of observers within EURASEC in the year 2002.

EURASEC is an economic organisation, which was created with the intention of building common economic area by the state-members of the Customs Union. It intends to coordinate the approaches of the member-states to develop an external policy, tariffs, prices and issues related to common trade space. EURASEC is not only responsible for creating a customs union and developing the trade-economic relations among the member States, but its activities include assisting in the creation of external borders, analysing the situation in the field of irregular labour migration within and outside of the EURASEC region and combating trafficking in human beings in its member states.

### **Combating irregular migration**

With the aim of combating irregular migration, the CIS countries have conducted a number of multilateral and bilateral agreements. For example, a multilateral agreement to cooperate in combating irregular migration – 'Cooperation within CIS member states to combat illegal migration' was adopted in 1998. In this document, the term 'illegal migrants' is defined as follows: *'citizens of third countries, and stateless persons, entering the member states countries in violation of their regulation on entry, exit, residence and transit, and also citizens of the member states violating the national laws on residence in each of the member states'*.

The agreement envisages that the member states should join efforts in actions of combating irregular migration and controlling migration processes. They also have to register irregular migrants and unwanted foreigners and to exchange related data. Furthermore, the document stresses that the member states should harmonise their national legislations in this field, improve training for officials working in the area, and improve

exchange of information on issues concerning national legislations, document validity and visa regimes with third countries.

However, the agreement does not describe the problem of unregulated employment. Nor does it adequately regulate the issues of labour rights violations within the CIS region.

The agreement foresees preventive punishments for irregular migration such as deportation. However, taking into account the imperfect legislation and labour migration institutes, the implementation of the provisions of this agreement often leads to violations of the human rights of irregular migrant workers. This is what happened in spring 2003 when *'...more than 100 Tajik workers were deported from Moscow without legal investigation in accordance with the established procedure'*<sup>29</sup>.

The members of the EURASEC signed a legal document in July 2004 that requires travellers to have an international passport in order to travel or even to enter each other's territories. This policy further complicates the already difficult life of many Central Asian migrant workers. The policy was meant to be enforced from January 1, 2005, *'...however, due to the shortage of passports in Kyrgyzstan and the technical difficulties for the around 600,000 Tajik citizens residing abroad, the requirement was deferred to 2007 for the citizens of these countries'*<sup>30</sup>.

### **2.4.3 Tajikistan's bilateral and multilateral agreements within the CIS**

There is a rather low level of cooperation between Tajikistan and other CIS countries in the field of labour migration<sup>31</sup>. Legislative basis of interstate relations between Tajikistan and Kyrgyzstan is the most developed one, although both countries are mainly migrant sending countries. In May 1998 Republic of Tajikistan has signed an 'Agreement on Cooperation in the Area of Labour Migration and Social Protection of Migrant Workers' with the Republic of Kyrgyzstan.

Tajikistan's co-operation with Kazakhstan and Turkmenistan is based on international legal acts and agreements concluded within the CIS. For example, the 'Agreement on Cooperation in the Area of Labour Migration and Social Protection of Migrant Workers' (1994) was signed between the CIS countries. This agreement regulates procedures of migrant recruitment; taxation, social security and medical care for migrant workers. It also

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<sup>29</sup> *'The protection of the rights of migrant workers in the countries of Central and Eastern Europe and the CIS and perspectives of joining the 1990 UN Convention'*, <http://www.december18.net/web/docpapers/doc1805.pdf>

<sup>30</sup> Central Asia-Caucasus Institute. Analytical Articles. December 14, 2005. [http://www.cacianalyst.org/view\\_article.php?articleid=3890&SMSESSION=NO](http://www.cacianalyst.org/view_article.php?articleid=3890&SMSESSION=NO)

<sup>31</sup> Scientific and Research Centre Sharg. *'Regional Cooperation for Development of Human Capacity in the Region of Central Asia'* (Dushanbe 2005) p.33, <http://www.cagateway.org/>

includes provisions for mutual recognition of diplomas and prior work service. The agreement envisages that the number of legal foreign workers would be established on the basis of bilateral treaties concluded between the CIS countries. These treaties made provisions for authorities of the states to establish an annual quota for foreign labour migrants, or to introduce it if the labour market situation changes. However the document's scope does not include the protection for irregular migrant workers.

Tajikistan does not have any cooperation with Uzbekistan in the field of labour migration.

Although the majority of Tajik migrant workers travel to Russia, the issues of regulating labour migration between these two countries remained unresolved for a long time. The intergovernmental 'Agreement on labour activity and protection of the rights of citizens of Russia in Tajikistan and citizens of Tajikistan in Russia' which was signed between the Russian Federation and the Republic of Tajikistan on 18 October 2004, was the result of the prolonged negotiations on the problem of irregular migration from Tajikistan to Russia. The agreement stipulates also the creation of a bilateral working group on labour migration. The Tajikistani parliament approved this agreement in January 2005. Authorities of the Russian Federation still have not ratified it. Anyway, the scope of the agreement's protection is limited to lawfully residents who are engaged in temporary labour activity in each of the contracting parties (Art.2).

Similarly in 2005 'An Agreement between the Governments of the Republic of Tajikistan and Russian Federation on labour migration and social protection of the citizens of the Republic of Tajikistan in Russian Federation and protection of Russian Federation citizens in the Republic of Tajikistan' was signed. The present agreement states the protection of the rights of the citizens of Tajikistan who are engaged in a lawful economic activity in Russian Federation, and prevents the illegal migration to both countries (Art.7 (c)).

As most Tajik migrant workers work in the construction sphere in Russia, the trade unions of Tajikistan found it necessary to cooperate with the trade unions of the destination countries, namely with Russian trade unions. To that end, the Federation of Trade Unions of Tajikistan concluded 'Agreement of protection of Constructors from Tajikistan in Russia' with Federation of Trade Unions of Constructors of the Russian Federation. Currently a similar agreement with Trade Unions of Constructors of Kazakhstan is developing. The aforementioned agreement is aimed at lawfully employed migrant workers and excludes the irregular migrants from the scope of its protection.

It has to be mentioned that bilateral and regional agreements are generally less effective, and in fact, are never as extensive as the human rights instruments on protecting migrant workers. Such agreements are usually limited in scope and time and often concern migrants who are nationals of

particular states. They never address the situation of irregular migrant workers. Therefore they do not provide a comprehensive framework for the protection of migrants' rights. However for states, which pay scant attention to migration issues, such bilateral and multilateral agreements represent relatively easy and accessible options.

Experts of all CIS countries note that legal acts, adopted at the level of the CIS, practically do not work, because, first, they are not covered financially and therefore are not adequately implemented. Second, no efforts are undertaken to unify the legislation in the sphere of labour migration within the CIS<sup>32</sup>.

Tajikistan, due to its dependency on Russian Federation, lacks persistency in overcoming the rising resistance of Russian Federation on the issues of protecting labour migrants from Tajikistan.

## **2.5 National Instruments**

### **2.5.1 Republic of Tajikistan: National labour migration policies and legislation**

'The Conception of Labour Migration of the Citizens of the Republic of Tajikistan abroad' which was adopted by the Government of Tajikistan under Resolution No. 242/2001 states that stimulation of labour migration is the main direction of Tajikistan's state policy. This document acknowledges that the country in the given time is not in condition to provide employment for its citizens; therefore their departure abroad with the purpose of employment is the realisation of their constitutional rights to employment (Art.1). The Conception states that the government acknowledges an unemployment level of 16,8 per cent and estimates that up to one-third of the employable population of Tajikistan may be subject to labour migration. The Conception further stresses that the policy of Tajikistan in the field of migration is the social-legal protection of the Tajik migrants abroad.

Though the government of Tajikistan is directly involved in promoting emigration from Tajikistan, since it is a crucial strategy in national economic development, this strategy raises some concerns. It can be concluded that first of all, Tajikistan sees emigration as a safety valve to release the building pressure of social problems. Second, the document states about the large population and structural unemployment and stresses the promotion of emigration of unskilled workers to relieve the burden being placed on social services of the state. Although the document promotes an emigration of a part of highly skilled workers, and reserves the

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<sup>32</sup> *'The protection of the rights of migrant workers in the countries of Central and Eastern Europe and the CIS and perspectives of joining the 1990 UN Convention'*, <http://www.december18.net/web/docpapers/doc1805.pdf>

other part in the country, it is obvious that this measure cannot be a guarantee against *the 'brain drain'*. Rather it seems that the Government is even promoting such "brain drain" provided that the local labour market is incapable of absorbing highly qualified personnel. Another incentive for the government is the fact that people working abroad send home remittances. As it is stated in the Conception, remittances sent by the workers abroad are supporting their families at home and are a valuable macroeconomic tool. In fact, these remittances are used to offset a balance of payments deficit. Tajikistan's promotion of emigration can also be seen as a potential way of avoid having to train people to become skilled workers.

The document states that it shall protect national migrant workers abroad through controlling the emigration process and signing labour contracts between the firms, companies and employees. The document, further stresses its efforts in combating illegal migration, although the vast majority of Tajik migrant workers in Russia are with irregular status.

Another core instrument, which regulates the process of the population's migration, is 'The Law on Migration' (11/12/1999). However, the issues of labour migration are considered only in 3 provisions. The Law introduced the term '*labour migration*' (Art.1). It states that the Government of Tajikistan shall regulate the labour migration in Tajikistan, including the immigration to and emigration from Tajikistan (Art.8). Art. 9 stipulates that the '*Immigration quotas*' and '*Immigration quotas for each calendar year shall be established by the President of the Republic of Tajikistan on the submission of the Government of the Republic of Tajikistan*'. However, the huge labour migration and numerous collisions connected with the law required to amend it, which was done in 2002. 'The Law on introducing changes to the Law on Migration' was adopted in which the concepts '*external labour migration*', '*the migrant workers*', and '*the frontier worker*' add the basic concepts used in the previous law. Notably, Art. 8 was added, which states that the '*State shall assist in sending labour migrants from Tajikistan in a organised order upon their consent only to those countries where their rights are protected*'. Para 1 of the same article spells out '*...sending labour migrants from Tajikistan shall be conducted on a basis of permission (license) issued by the competent organ of the Republic of Tajikistan in a order adopted by the Government of the Republic of Tajikistan*'. Para 2 says that '*Citizens of Tajikistan who are going abroad for getting the paid job, should have the labour contract (contract) concluded with the employer, the passport issued in bodies of the Ministry of Internal Affairs, and if necessary - the visa of the state of employment*'. I.e. only persons with valid documents are allowed to take job in the receiving countries. Another notable amend to Art. 8 is that it spells out the regulation of activities connected with issuing licenses to Tajik migrants working abroad.

On 25 July 2001 the Decree of the President of the Republic of Tajikistan on issuing of licences for provisions of employment for Republic of Tajikistani citizens abroad and enlisting foreign manpower into the Republic

of Tajikistan was adopted. The document states that the state body, which is authorised to give out the license for realisation of employment of citizens of Tajikistan abroad, is the Ministry of Labour and Social Protection of Population. The Ministry, however, issues only a limited number of licences to firms and recruiting agents for realisation of employment of citizens abroad, and the vast majority of Tajik migrant workers are travelling to Russia without proper, (i.e. labour contracts) documents. Therefore they remain outside the protection of the national laws in the host country.

### **2.5.1.1 Competent institutes on management of labour migration**

Within the executive apparatus of the President of Tajikistan there is a department of employment and social protection of the population, dealing with the questions of internal and external labour migration. The staff on regulation of issues of labour migration is created at the governmental level, which should carry out the coordination of activity of the various ministries and departments.

The Ministry of Labour and Social Protection of Population develops suggestions on formation of policy of the state in the field of labour migration; directly participate in the development of all acts concerning labour migration, protects the rights of labour migrants, prevents illegal labour migration, realises the developed measures in practice, gives out licenses to subjects of the managing rendering services to citizens of Tajikistan on employment abroad, provides migrants with information and legal support. There is a department of external labour migration acting within the Ministry of Labour and Social Protection of population of Tajikistan.

The republican migratory service office within the system of the Ministry of Labour and Social Protection of population is entitled to: give unemployed persons vacancies available abroad through the licensed recruiting agents, provide employment of citizens of Tajikistan abroad; advise, render services on vocational guidance of potential labour migrants; provide through system of technical training colleges and the educational centres, vocational training of a labour migrants.

In 2002 Russia began to deport Tajiks from Russian Federation on a large scale. Tajik migrants were deported to the Russian-Tajikistani border for the account of the Tajikistani embassy in the Russian Federation. In order to protect Tajikistani citizens in Russia, authorities of Tajikistan established a representative of the Tajik Ministry of Interior in the Russian Ministry of Interior. In 2001 Tajikistan authorities created representations of the Tajikistani Ministry of Labour and Social Protection of the Population in three regions - Moscow, Novosibirsk and Volgograd. They are responsible for the protection of Tajikistani citizens – labour migrants in the Russian Federation. It is envisaged that the representation in Moscow regularly

sends its representatives on inspections to every region of Russia, where Tajikistani citizens are residing.

The Ministry for Foreign Affairs is the second important body for regulating labour migration. According to the Regulation ‘On regulation of questions of labour migration’ adopted under the Resolution No. 595 from December 30th, 2001, the following ministries and departments shall take part in the management and regulation of labour migration (besides the Ministry of Labour and Social Protection of population and the Ministry for Foreign Affairs): The Ministry of Internal Affairs carries out control over the admission of foreigners in the Republic of Tajikistan together with the Ministry of security of Tajikistan which provides safety of labour migrants in places of the organised gathering and by their transportation. The committee on protection of frontier under the Government of Tajikistan carries out the control of departure and entrance of citizens. The ministry of transport, upon the request of the Ministry of Labour and Social Protection of the population, provides labour migrants with the means of transport, aviation and train tickets, as well as organises special airplanes in destination countries (territory of reception). Ministry of Health, upon the request of the Ministry of Labour and Social Protection of population, provides inspection and health services of labour migrants. The Customs Committee under the Government of Tajikistan carries out the customs control of labour migrants. National Bank of Tajikistan provides the transfer of money remittances of labour migrants in republic through the authorised banks.

## **2.5.2 Russian Federation: National labour migration policies and legislation**

*‘Although the United Nations Economic Commission for Europe (UNECE) considers that the Russian economy has the potential to grow rapidly, provided that its resources are used more efficiently, it notes that its declining population could become a serious constraint on its ability to meet its ambitious growth target of doubling GDP over the next ten years. The decline in the Russian Federation’s population (currently 0.57 per cent per year, and estimated to reach 0.73 per cent by 2020 and 0.86 per cent by 2050) is expected to result in labour market shortages and increased dependency ratios (United Nations, 2002),’<sup>33</sup>.*

It seems that in recent years the Russian government has begun to understand the importance of labour migration to the economy of the country. If at parliamentary hearings in 2002 state officials described illegal migration as a national catastrophe<sup>34</sup>, today they look at migrant workers as

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<sup>33</sup> International Labour Office, ‘Managing Transitions: Governance for decent work’ (2005) 81. <http://www.ilo.org/public/english/standards/relm/rgmeet/7term/dgrevol2.pdf>

<sup>34</sup> Country report - Russian Federation (2002) 206, <http://www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=RSDCOI&id=402d08082>

contributors to their economic and demographic development. For example, between 2002-2003 the number of labour permits issued by the Federal Migration Service to foreign workers increased. The Migration Service also expected that employers would have hired up to 500,000 migrant workers in 2004.

Given the demographic crisis, and needs of the Russian economy in labour force, Russian authorities are now considering arranging for regularisation of formerly irregular labour migrants, including those from Central Asian countries<sup>35</sup>.

Nevertheless, the policy on deterring and restricting irregular migration remains the defining policy of Russian Federation. In order to prevent irregular migration to the country, Russian authorities have chosen two main approaches. First Russia tackles irregular migration through signing bilateral agreements, with all 11 CIS countries, which send migrant workers. Second through developing an Integrated System of Migration Control, which is based on migration cards in combination with the obligation of migrants to register with the authorities within three days after entering the country. However simplified procedures for foreigners to engage in legal occupation are not developed. The current admission procedure with regard to labour purposes and work permits is imposing too many bureaucratic obstacles and financial burdens upon employers and in fact, is too lengthy to actually meet the requirements of the labour market.

There are numbers of legislations, which are regulating the process of migration in Russia. The most important are:

- RF Constitution, 1993;
- Federal Law No. 115 'On Legal Status of Foreign Citizens in the Russian Federation', 2002;
- FL No. 1114 'On Order of Exit From the Russian Federation and Entry Into the Russian Federation', 1996;
- FL No. 62 'On Citizenship of the Russian Federation', 2002;
- FL No. 1032-1 'On Population Employment in the RF', 1991.

### **2.5.2.1 Federal law 'On the Legal Status of Foreign Citizens in the Russian Federation'**

The State Duma of Russian Federation adopted the Federal Law 'On the Legal Status of Foreign Citizens in the Russian Federation' in May 2002. The law however, does not define '*migration*', '*labour migration*' or '*labour migrant*'. Nor does it define the term '*illegal migration*' or '*illegal migrant*'. But it defines '*foreign worker*' and '*labour activity*'.

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<sup>35</sup> International Labour Office, '*Managing Transitions: Governance for decent work*' (2005) 81, <http://www.ilo.org/public/english/standards/relm/rgmeet/7erm/dgprepvol2.pdf>

According to this law foreign national residing temporary in the territory of Russian Federation has a right to be engaged in labour activity in organisations, companies or with private persons on the basis of an employment contract (agreement). Foreign national may also work as an individual businessman and may work without obtaining juridical status (Art.2). Further Art. 2 envisages issuing '*migration cards*'. Migration card is a document that contains information on arrivals and departures of foreigners. All foreigners shall have to fill in migration cards, which will be given to them the instant they cross the Russian border. It is required to put in the migration card personal data, terms of stay in Russia and purposes of visit and the prospective stay of residence.

The main purpose of this law is to limit the illegal immigration to Russia. Therefore the law characterises by its acts to restrict and control the access of foreign citizens to Russia. According to the present law, all nationals of CIS countries are included in the category of foreigners, including those of Central Asian countries. There is a visa-free regime between the CIS countries but this does not ease the situation of non-visa holders. On the contrary, the non-visa holders are clearly at a disadvantage as compared to visa holders. The non-visa holders are allowed to stay for a maximum of 90 days, subject to an extension for a maximum one-year under an employment contract (Art. 5, para 5). In other case, a non-national may be deported. In all other cases both visa-holders and non-visa holders are equated in holding rights and responsibilities. All foreign nationals based on the period of their stay in Russia may obtain temporary stay, temporary residence (less than three years), and permanent residence. Both a foreigner on a temporary stay in Russia and a foreigner outside Russia may obtain a temporary residence permit. However, a temporary residence permits covers a period of six months, so most foreigners on a temporary stay – CIS nationals and residents whose temporary stay may not exceed 90 days – will not be able to obtain such a permit.

Article 7 of the Law lists reasons for a denial of temporary residence permit and for its withdrawal. There is, however, a great confusion between the reasons to deny a permit and reasons to withdraw a permit, which causes a situation where it is possible to deny a permit if a person '*within three years of entry does not have a living space in the Russian Federation where they lawfully reside*' (Art. 7 para 9). While it is clear that this may only be a reason to withdraw, not to deny a residence permit, but even a withdrawal is problematic, because a temporary residence permit is issued for a maximum of three years, without a possibility of extension. Another reason, which may formally justify a denial of temporary residence permit, is '*departure from RF to another country for permanent residence*' (Art. 7 para.10).

According to Art. 11 (para 2) foreign citizens temporarily residing in the country have no right to change their place of residence in the federal region where they are allowed to reside, and may not choose a home outside this federal region at their own will. This article can be seen as an obvious

violation of the rights to freedom of movement and choice of residence guaranteed under the Constitution of Russian Federation (Part 1, Art. 27).

### *Employment and labour relations*

Employment-related provisions lack a consistent approach, which causes much confusion and difficulties. Employment opportunities available to foreigners depend on the category foreigner belongs to. As it has been stated above, the term '*foreign worker*' defines a foreign citizen in temporary residence working under an employment contract or a civil law service contract (Art.2). To be able to legally work in Russia, a foreign citizen needs a work permit (Art.13).

Under Art. 18 of the law, 'foreign workers' enter Russia following an invitation by an employer who is allowed to employ certain category of workers. At the same time, the employer must obtain a work permit for each foreign worker. Art. 18 says nothing about the duration of employment contracts, or the possibility of their extension. This and some other articles go into great details of relations between employers and authorities around the issue of work permits, deposits for the worker's return ticket, provisions for deportation, reporting, and control. In contrast, they hardly ever address the migrant workers' rights – wages, work conditions, medical insurance, and implications of an early termination of labour contract, etc. The only related provision (Art.18 para13) gives a foreign worker the right, if his/her employer loses a license to employ foreign workers or closes the operation, to sign a work contract with another licensed employer for the period remaining before the work permit expires, provided that this period is longer than three months.

It is necessary to mention here the important limitation, which does not allow considering the situation with legal guarantee of the equal treatment principal of migrant workers. In Russia the majority of social and labour guarantees are applied only to migrants, *who reside permanently* on the territory of Russia (who have residence permit). Thus, in accordance with the Federal Law as of 10<sup>th</sup> December 1995 No 195 'On the Basics of Social Services of Population in the RF' (p.4 cl. 7) '*permanently residing foreign citizens have equal rights to social service with the RF citizens if otherwise is not stated by RF international agreement.*' The same situation is with other social guarantees. The status of a temporarily residing person, issued for three years, gives a migrant the right to work, but does not give the right to pension accounting, allowance receiving and other social guarantees. These rights are granted only to those who have the status of a permanently residing person (residence permit), which is issued for 5 years, but in order to receive it, it is necessary to pass the stage of a temporary residence.

Art. 5 para 5 establishes the term of temporary stay for visa free foreigners. According to this provision their labour contract may not exceed one year, which effectively restricts them to temporary or seasonal work and makes them extremely dependent on their employers.

In autumn 2002, new amendments were put into Russian legislation that made employers more responsible for the illegal recruitment of foreign migrant workers, and increased the penalty by a factor of one hundred. However the procedures of registration and obtaining a work permit were not simplified. Such a paradigm of migration policy with respect to labour migration from the CIS states is particularly problematic because of the increasing rise in irregular migration within the region.

### **2.5.2.2 The Federal law ‘On Citizenship’**

The present law was adopted in 1991. This law requires a five-year residency period in Russia, demonstrable fluency in Russian, and evidence of a legal job.

The issuing of residence permit to CIS citizens, including those from Central Asian countries was actually started in 2000. Article 13, para 1 (a) of the new law establishes the date of issue of the residence permit as the starting date of the five years residence history required before one may apply for Russian citizenship. Consequently, even if a national of the former Soviet Union has lived in Russia lawfully for more than five years, cannot apply for Russian citizenship now and have to wait five years after obtaining a residence permit.

In addition to *‘five years residence’* requirement, there is another requirement – *‘a lawful source of income’*. However, it is not specified in the law what can be regarded as lawful income. The law makes no exception for refugees and political asylum seekers, although people who fled from persecution in their country of origin cannot be expected to have established a reliable source of income in Russia and should benefit from state assistance.

The law creates other barriers to the acquisition of Russian citizenship. For example, the phrase *‘a citizen application must be filled at the location of one’s residence’*. Therefore a numerous rejections of citizenship are caused due to this phrase. The police persist in interpreting *‘residence location’* as a place where an individual is registered for purposes of *‘propiska’*, rather than his or her actual residence.

Some Tajik migrants who have lived in Russia since 1992 or 1993 have neither Tajik nor Russian citizenship. They have the old Soviet passports but not the current Russian ones, having missed the 1997 deadline for exchanging the old passports. As a result, these persons are stateless. *‘Tajiks who came to Russia around 1993 have the old Soviet passport. They are not granted citizenship because they were registered under their Soviet passports until 2002 and are now considered stateless. I think they can apply for Russian citizenship. I don’t know why they are rejected. It’s tough for them now. 5% out of 100 are lucky beggars who manage to get hold of a*

*passport through some connection*' says the head of a Tajik migrant community in Russia, 43, Vakhsh district<sup>36</sup>.

### **2.5.2.3 Regional laws**

Another problem in Russia concerns the different administrative subjects of the Russian Federation, which adopt their own regional laws and regulations<sup>37</sup>. Often such regional regulations contradict the federal laws. For instance, in the regions of Krasnodar and Stavropol, where irregular migrants are mostly concentrated, discrimination against them is widespread. For example, under the law passed by Krasnodar local authorities, migrants are not even allowed to enter the region of Krasnodar. Such regional acts used to contain different restrictions to, or requirements for, registration, such as the limitation of the period of registration, the presence of close relatives legally residing in the region, the payment of fees, the availability of a minimal amount of square meters per person, and others. Through a number of interventions by the Constitutional Court as well as lower courts, such requirements were found to be abusive interpretations of the federal law and were declared unconstitutional. However, in spite of these positive developments, little is said to have changed at a practical level.

### **2.5.2.4 Institutional framework**

The governmental body responsible for identifying persons who are staying in Russia illegally is the Ministry of Interior. The Ministry of Labour is responsible for the legal aspects of employment and the Federal Migration Service together with other bodies is responsible for irregular migration, including illegal labour migration. These two bodies prepare related legal acts jointly.

After the inclusion of the Migration Service in the Ministry of Interior (MoI), the fight with irregular migration became the priority direction, but the creation of legitimate mechanisms of labour migration once again has remained outside the political and financial attention of the RF Government.

There are serious institutional problems in the sphere of labour migration in Russia, such as the lack of systematic cooperation between various departments on labour migration matters. For example, such cooperation between the RF Ministry of Foreign Affairs and FMS MoI is necessary for the development and conclusion of bilateral and multilateral agreements on the labour exchange with migrant sending states.

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<sup>36</sup> IOM with Sharq Scientific Research Centre, *'Labour Migration from Tajikistan'*, July 2003, [http://www.tcc.iom.int/iom/images/uploads/tajikistan\\_1071229382.pdf](http://www.tcc.iom.int/iom/images/uploads/tajikistan_1071229382.pdf)

<sup>37</sup> *'Basis of Claims and background Information on Asylum-seekers and refugees from the Russian Federation'* (2004) 33, <http://www.unhcr.org/cgi-bin/texis/vtx/publ/opendoc.pdf?tbl=RSDLEGAL&id=40a88b60a&page=publ>

### **2.5.3 Conclusion**

Irregular labour migration is a new and complex phenomenon for many CIS countries. By describing irregular migration as a threat to national security many CIS countries began to toughen their borders and migration policies. To that end, a number of bilateral and multilateral agreements on combating irregular migration have been signed between the CIS countries.

The visa free regimes, which exist between most CIS countries, allow the migrant workers enter some of the destination countries legally. However factors such as unreasonable administrative barriers make the legal employment of migrants impossible.

In the field of regular migration in most CIS countries there is an existing legal basis, as well as a number of bilateral and multilateral labour agreements, however the main problem is their actual implementation. There is a need to take measures to ensure the actual implementation of existing legislation, including labour agreements within the CIS.

The development of national legislation in Russian Federation, which moved towards stricter regulations, ceased to reflect agreements concluded earlier within the CIS to protect migrant workers in host countries. New immigration legislation in Russia – ‘Law on the Legal Status of Foreign Citizens in the Territory of the Russian Federation’, effective as of 2002 introduced complicated procedures for legalizing residence. The legal employment of migrants requires a long time, and an enormous amount of paperwork both for migrants and for employers. This law also limits the freedom of movement for labour migrants on the territory of Russia. Due to this new legislation, an employer’s procedures to obtain a permit to recruit a foreign labourer, and then issue a work permit takes an average of six months. The law has limited the possibilities for legal residence of foreign labour migrants on the territory of the Russian Federation as well as their legal employment by employers. And no special preference has been provided for migrants from the CIS states.

The national policy and legislation of Tajikistan on migration issues are considered to be liberal ones, however the promotion of out-migration from the country without ensuring protection of their rights and freedoms in the host countries, rise serious human rights concerns.

## 3 Tajik Migrant Workers in Russia

### 3.1 Migrant workers with irregular administrative status before 1997. Refugee status denied

The civil war, which took place in the 1992 in Tajikistan, had resulted in a high number of internally displaced persons. Through 1992-1993 every fifth inhabitant of Tajikistan became a refugee or internally displaced person<sup>38</sup>. Although the civil war ended in early 1993, some uproar activity continued to destabilise the country up to 1997. According to the research conducted by Sharq Scientific Research Centre 284,600 people emigrated from Tajikistan in the period of 1991-1995.

In the period between 1992-1995 complex interconnections between forced displacement and mass migration became increasingly evident in the CIS region. In the case of Tajikistan both the civil war and the collapsed economy have resulted in internal displacement of the population.

However, after 1995 the mass emigration from Tajikistan to all other CIS countries except of Russia decreased. The decrease in the number of Tajik immigrants in Uzbekistan is connected with repatriation of Uzbek minorities from Tajikistan, and second, with introduction of border isolation measures taken by Uzbekistan. In 2001 Uzbekistan introduced visa regime with all CIS countries.

The Tajik refugees (about 200.000 in CIS countries and 60.000 in Afghanistan) have played the main role in formation of the contemporary migrant workers nets. Large numbers of Tajik citizens entered Russia in 1992 as externally displaced persons or refugees, although many found it difficult to register as such. Because in 1991-1992, Russia was preoccupied primarily with her own displaced populations and was reluctant to assume responsibilities for dealing with refugee issues. In fact, 'UNHCR's representative in Moscow reported in January 1993 that *'refugees/asylum seekers are not welcome; as far as Russia is concerned they are in transit and assisting them here would create a pull factor'*<sup>39</sup>. He added that Russia did not even have the financial means to look after her own displaced, the 1992 budget of the Federal Migration Service being US\$3 million for one

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<sup>38</sup> IOM with Sharq Scientific Research Centre, 'Labour Migration from Tajikistan', July 2003, [http://www.tcc.iom.int/iom/images/uploads/tajikistan\\_1071229382.pdf](http://www.tcc.iom.int/iom/images/uploads/tajikistan_1071229382.pdf)

<sup>39</sup> 'Displacement in the former Soviet Union'. UNHCR, Public Information Section, 'CIS Conference on Refugees and Migrants', 30-31 May 1996, Geneva, p.3. <http://www.reliefweb.int/library/documents/ch08.pdf>

million displaced people<sup>40</sup>. In this process ‘*Only a few of the 300,000 Tajiks who were now refugees in the Russian Federation had been able to gain refugee status. For the rest, they were not considered as refugees but as illegal immigrants*’<sup>41</sup>.

## **3.2 Tajik migrant workers after 1997**

The emigration from Tajikistan was reduced after 1997 when the political situation in Tajikistan stabilised to some extent. The peace agreement was signed between the Government of Tajikistan and United Tajik Opposition in June 27, 1997. However toughening or isolation measures on migration issues taken by other CIS countries, namely Russia have also contributed to the decrease of emigration from Tajikistan. During this period, many refugees and externally displaced people returned back to Tajikistan.

The overall structure of emigration is as follows: Since 1995 the level of emigration from Tajikistan to other CIS countries except of Russia was decreased. However, in 1999-2000 the emigration was again on the peak because of the poor economic conditions in the country. Although the economic situation slightly improved in the early 2000, the emigration from the country continued.

According to estimations of Sharq Scientific Research Centre, a number of 632,000 labour migrants, or 18 percent of adult population of Tajikistan left the country for temporary and permanent work during the period of 2000-2003. According to statistics of the State Migration Service for 2005, the number of temporary labour migrants from Tajikistan is 400,000 – 450,000 person. This number is based on the number of migration cards, registered by the State Migration Service.

## **3.3 Migrant workers human rights violations**

### **3.3.1 Vulnerability of Tajik migrant workers**

According to the research conducted by the International Organization for Migration in Cooperation with the Sharq Scientific Research Centre in Tajikistan, ‘*Tajik migrant workers have been the victims of the following criminal activity:*

- *Extortion (violence, threats, abuse of power);*
- *Forced labour;*

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<sup>40</sup> Ibid. p.4

<sup>41</sup> ‘*The Rights of Non-Citizens: A Discussion among Global Advocates*’, Report of a Conference held in Geneva, Switzerland (February 28-29, 2004) p.23 [http://www.justiceinitiative.org/db/resource2?res\\_id=101869](http://www.justiceinitiative.org/db/resource2?res_id=101869)

- *Forced participation in illegal activity (drug-smuggling, illegal workshops, grand larceny, etc.);*
- *Sexual exploitation (prostitution) or other forms of sexual violence*<sup>42</sup>.

*The following persons are directly linked to the risk of the above-mentioned crimes: recruitment agents in Tajikistan; border and customs officials; police; leaders of tourist groups; business people and their agents; criminal racketeers; and law enforcement agents in the destination country*<sup>43</sup>.

Further, the research identifies three main factors that make migrant workers from Tajikistan vulnerable to exploitation in the host countries:

- *'Unskilled or semi-skilled Tajik labour migrants are forced to work in a shadow economy, because the level of their qualification and education do not allow them to work in a legal sector;*
- *Migrant workers are not well informed about the rules and regulations of the host country on entry, exit and residence, and very often violate these rules. This leads to mass deportation of Tajik migrants (in 2002 about 200 Tajiks were deported from Russia and in 2003 – around 1000);*
- *Many Russian employers prefer to take on Tajik workers, because they tend not to complain and are willing to work for low wages*<sup>44</sup>.

Because the possibilities to work legally in Russia are limited, and legal employment is in fact less attractive due to lower earnings, Tajik migrant workers remain in an irregular situation.

### **3.3.2 Exploitation by employers, living and working conditions**

*'Farukh Montzarov works at least 11 hours a day as a loader and brick hauler in the deep cold of the Russian winter. At night, he sleeps on a cot in a cramped 8-by-15-foot storage container with seven other migrant workers, thankful that at least it has electricity and a small heater. His last employer fired him after he complained about not being paid for two months' work. In the past three years, he estimates he has paid more than \$2,000 in bribes to police who threatened to deport him. And in 2003, he spent two months in the hospital after a gang of young Russians attacked him on a Moscow subway platform, calling him a dirty foreigner'*<sup>45</sup>.

This citation can describe the living and working conditions of Tajik workers in Russia, but their situation is much worse.

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<sup>42</sup> IOM with Sharq Scientific Research Centre, 'Labour Migration from Tajikistan', July 2003, [http://www.tcc.iom.int/iom/images/uploads/tajikistan\\_1071229382.pdf](http://www.tcc.iom.int/iom/images/uploads/tajikistan_1071229382.pdf)

<sup>43</sup> Ibid

<sup>44</sup> Ibid.

<sup>45</sup> San Francisco Chronicle (SFGate): <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2005/12/15/MNG6IG89F61.DTL>

The problem is that most migrant workers have an oral agreement with employers. As the research states *'45% of Tajik workers are working under an official contract, while 54.4% have an oral agreement'*<sup>46</sup>. The lack of an official agreement makes them vulnerable to exploitative working conditions such as working twelve hours a day, and sometimes throughout the night without overtime pays. Many of these workers simply are not paid salaries for the job done or not paid for two to three months and even more. Unaware of their rights, or afraid to complain for fear of losing their jobs, the majority of these workers agree to such exploitations.

The exploitative practices are mostly widespread in Russian construction sites but also in agricultural sectors. In certain construction and agricultural sites migrant workers are forced to slave conditions<sup>47</sup>. As the research states, *'A common complaint of Tajik labour migrants is that a tacit agreement exists between employers and police to keep Tajik workers in exploitative conditions, especially in the construction industry. Almost every migrant worker - constructor, his friends and relatives were facing the cases of deceit from the part of employers who were using the absence of the labour contract to underpay or not to pay the workers at all.'*<sup>48</sup>

The living conditions of migrant workers are below the level of satisfactory. *'40.4% rent a room or share a flat with several other people. Migrants spend between one-thirtieth and one-sixth of their earnings on rent'*<sup>49</sup>.

Many migrant workers are accommodated within the construction premises. The premises are usually in bad sanitary condition and in fact are unfit for human habitation.

*'Our fellow countrymen are forced to live in cellars, containers, attics, sheds. Once I lived directly in a boiler house without any conveniences'*. Mechanic, 28, Dushanbe<sup>50</sup>.

*'The worst place is the Cherkizovsky market in Moscow, where 700 people live in the cellars without any amenities'* Dzhuraeva says<sup>51</sup>.

### 3.3.3 Health

Irregular migrant workers from Tajikistan are extremely vulnerable to violations of their right to health. The dangerous living conditions, physical abuses, harassment by local officials and police authorities, social discrimination and barriers to the access to health services impact negatively

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<sup>46</sup> IOM with Sharq Scientific Research Centre, *'Labour Migration from Tajikistan'*, July 2003, [http://www.tcc.iom.int/iom/images/uploads/tajikistan\\_1071229382.pdf](http://www.tcc.iom.int/iom/images/uploads/tajikistan_1071229382.pdf)

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid

<sup>51</sup> San Francisco Chronicle (SFGate):

<http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2005/12/15/MNG6IG89F61.DTL>

on migrants' health. The specific nature of their jobs at construction sites makes them especially vulnerable to occupational, infectious and psycho-emotional health problems. Various infectious diseases including HIV and AIDS are targeting irregular migrant workers.

There is no coordination between Russia and Tajikistan on the issues of health of Tajik migrant workers. Migrant workers are not included in health insurance and basic health care, treatment and support. But, even when the social and health services are available, irregular migrants do not have money to pay for the treatment or often hesitate to seek such services for fear of being reported to immigration officials, or deported.

The research reveals that construction workers acknowledge that they have no opportunity to seek medical care. They have no insurance, they are not registered, many of them are not allowed to leave the building site, or they are afraid of running into the police, and they cannot afford doctor's fees and medicines<sup>52</sup>.

### **3.3.4 Death and injuries**

Amnesty International reports: *'More than 200 Tajik migrant workers were reported to have died in the Russian Federation in suspicious circumstances during the first half of the year; unofficial sources put the number at over 800'*<sup>53</sup>.

Accidents or deaths resulting from bad working and living conditions are common among Tajik migrant workers. In 2001, nearly 40% of deaths in the workplace occurred in the construction industry (Alla Tuchkova, 'The Most Fatal Trades', *Nezavisimaya Gazeta*, 4 November 2002).

### **3.3.5 Racial intolerance and xenophobia in Russia**

The people of other post-soviet republics in Russia also face human rights abuses, but Tajik workers besides being discriminated almost in every field, are highly stigmatised and dehumanised in addition. Russia is dealing with Tajik migrant workers especially rough. Some Russian parliamentarians and media are openly raising anti-Tajik slogans, which only contributes to an already existing climate of racial intolerance and xenophobia in Russia<sup>54</sup>.

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<sup>52</sup> IOM with Sharq Scientific Research Centre, 'Labour Migration from Tajikistan', July 2003, [http://www.tcc.iom.int/iom/images/uploads/tajikistan\\_1071229382.pdf](http://www.tcc.iom.int/iom/images/uploads/tajikistan_1071229382.pdf)

<sup>53</sup> Amnesty International Report, 2004. Available at: <http://web.amnesty.org/report2004/tjk-summary-eng>

<sup>54</sup> For example the representatives of the Russian Federation Duma Aleksandr Kotenkov openly made discriminatory comments about Tajiks by saying 'Moscow is full of Tajik beggars'. See also L. Jonson "Vladimir Putin and Central Asia" 2004 (London, I.B.Taurus), p.109.

Another most worrying problem is the nationalist groups in Russia persecuting foreigners in the country. Nationalistic youth groups called skinheads kill lots of foreigners every year in Russia. 'According to the Moscow Bureau for Human Rights, a non-governmental organisation, there were 44 racist killings in Russia in 2004, more than double the number in 2003'<sup>55</sup>. But such cases are usually not filed under racial crimes, but under 'hooliganism' by the law enforcement agencies of Russia.<sup>56</sup>

### 3.3.6 Remittances

Despite the human rights violations, the migrant workers remittances are crucial to the survival of many households in Tajikistan. 'According to unofficial estimates, upwards of 800,000 Tajiks earn income illegally in Russia every year, remitting as much as \$400 million to relatives back home. According to the [CIA World Factbook 2002](#) the remittances are roughly double the estimate of the state's annual expenditures in 2000'<sup>57</sup>.

The Tajik government has taken measures to organize money transfers via official channels and has reduced the rate for transfer from 30% to 2-3% in 2003. As a result, bank remittances to Tajikistan increased up to \$256 mil. in 2003. However, in Tajikistan many migrants still send money over unofficially via friends, relatives or by the 'hawala' system. 'Hawala' is the alternative informal money transfer system. Research in Tajikistan has demonstrated that 'migration earnings are a basic source of income, as testified by 81.7% of the respondents. Migration incomes helped to improve living standards for 67.4%, and considerably improve – for 14.8% of the respondents'<sup>58</sup>.

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<sup>55</sup> 'Foreign students living in fear as skinhead gangs murder again', ITP Business, 1 January 2006, <http://www.itp.net/business/news/details.php?id=19148&category>

<sup>56</sup> <http://www.fsumonitor.com/stories/052303Russia.shtml>

<sup>57</sup> <http://www.eurasianet.org/departments/business/articles/eav010903.shtml>

<sup>58</sup> IOM with Sharq Scientific Research Centre, 'Labour Migration from Tajikistan', July 2003, [http://www.tcc.iom.int/iom/images/uploads/tajikistan\\_1071229382.pdf](http://www.tcc.iom.int/iom/images/uploads/tajikistan_1071229382.pdf)

# 4 Irregular Migrant Workers in Kazakhstan

## 4.1.1 Kazakhstan as another migrant receiving country

Republic of Kazakhstan is considered as the most developed among the Central Asian countries in terms of its economy<sup>59</sup>. During the past decade, the economy of Kazakhstan has seen a significant growth thanks to its oil industry. Because of its higher social and economic growth indicators and relatively high level of work remuneration among the CIS states, Kazakhstan became another destination country for migrant workers from Kyrgyzstan, Tajikistan, Uzbekistan, and Turkmenistan.

However, during 1992 – 2003, 2,9 million people left Kazakhstan. During this period the number of permanent residents in Kazakhstan decreased up to 10 per cent<sup>60</sup>. In order for the population to grow, the Government of Kazakhstan has set targets that the population should increase from 15 million in 2005 to 20 million in 2015, including introducing programs for the migration of 4.5 million ethnic Kazakhs, *oralmans* from neighbouring countries of Central Asia, Turkey, Mongolia, and China. Although 374,000 *oralmans* have returned to Kazakhstan in recent years, the bulk of Kazakhstan's population growth is currently the result of illegal migration into Kazakhstan from the rest of Central Asia. Experts state that potential labour migration to Kazakhstan from other CIS countries especially from Central Asian countries will increase in the future. This tendency appeared in 2005 when Russia toughened its immigration policy by requiring other states citizens to enter Russia with foreign passports. This restriction policy will lead to the temporary decrease on labour immigration to Russia and increase in labour immigration to Kazakhstan.

At present, the majority of migrant workers in Kazakhstan are Uzbeks and Kyrgyz nationals. The number of Tajik migrants working in Kazakhstan compared to Russia is small. Since the mid-1990s, Tajiks fled their country and came to Kazakhstan as refugees or externally displaced persons. Their number was indicated as 4000<sup>61</sup>. Although Kazakhstan acceded to the UN Refugee Convention and Protocol in 1999, it effectively denied official refugee recognition to many Tajiks.

Tajik migrant workers in Kazakhstan are engaged mainly in seasonal agricultural works. However many of them are often working irregularly. According to some sources around 12,000 Tajik citizens were residing

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<sup>59</sup> IOM Assessment Report, 'Labour migrants from Uzbekistan in the southern regions of Kazakhstan', <http://www.iom.kz/files/Research%20ENG.pdf>

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

illegally in Almaty of Kazakhstan in 2001<sup>62</sup>. Many Tajiks are working as traders in markets, selling agricultural products.

## **4.1.2 Kazakhstan's laws and regulations in the field of labour migration**

### **4.1.2.1 The law 'On Population Migration'**

The legal framework that regulates labour migration processes in Kazakhstan is outlined in the following laws and decrees: the 'Law on Population Migration' (arts. 5-8), passed in 1997 and last amended in 2002, the 'Law on Legal status of Foreign Citizens in the Republic of Kazakhstan', passed in 1995, the 'Law on Licensing', passed in 1995 and Governmental Decrees of the Republic of Kazakhstan № 836, № 55, and №136, which indicate labour migration quotas and describe procedures for legalization of labour migrant's status in Kazakhstan.

The law 'On Population Migration' states that labour migration is permitted to and from Kazakhstan, however the priority in regulation of this process is given to the protection of internal labour market. The law defines *'illegal immigrants'* in Chapter 1, Art. 1 as follows: *'illegal immigrants are foreigners and stateless persons arriving in the territory of the Republic of Kazakhstan on their own without the relevant permit of the authorised body or having obtained them by fraud'*. Further the law states in art. 7 that foreign citizens or stateless persons who are engaged in labour activities without the required permit, unless otherwise provided by international agreements, shall be subjected to deportation from Kazakhstan. As for the regulation of labour activities of citizens of CIS member states, the signed bilateral and multilateral agreements concluded between Kazakhstan and other CIS countries have to be taken into consideration (Art. 8). However, the 1994 agreement on cooperation on labour migration among the CIS states is not enforced as many countries have since adopted national legislations that have negated the terms of that agreement. Art. 5 of the law states that employment of foreigners in Kazakhstan is not considered as labour migration in cases specified in article 11 of the law. Article 11, which describes the categories of foreigners present in Kazakhstan that are not considered as immigrants, states that those who are temporarily working in Kazakhstan are not viewed as immigrants. However, according to article 5 of the same law they are not viewed as labour migrants either.

The most part of the present law addresses the problems of *oralmans*<sup>63</sup> and does not provide clear policy on labour migration. It can be concluded that external migration is seen as repatriation of ethnic Kazakhs in Kazakhstan

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<sup>62</sup> EURASIANET, Tajikistan gains global prominence, yet fights regional isolation, 2001, <http://www.eurasianet.org/departments/business/articles/eav111401.shtml>

<sup>63</sup> IOM Assessment Report, 'Labour migrants from Uzbekistan in the southern regions of Kazakhstan', <http://www.iom.kz/files/Research%20ENG.pdf>

only. Moreover, the law does not adequately address issues of labour migrants' rights and duties.

#### **4.1.2.2 Decree of the President of the Republic of Kazakhstan No. 2337 of 19.06. 1995 'On the Legal Status of Foreign Citizens in the Republic of Kazakhstan'**

The Decree of the President of Republic of Kazakhstan having the force of law, No. 2337 of 19 June 1995 'On Legal Status of Foreign Citizens in the Republic of Kazakhstan' regulates entry to and departure from Kazakhstan, the status of temporarily and permanently residing foreigners or stateless persons in Kazakhstan and their basic rights, freedoms and obligations, as well as the reduction of their stay and expel from Kazakhstan.

According to Article 22 foreign citizens can enter Kazakhstan on the presentation of valid foreign passports or submitting other documents if they have Kazakhstani entry visas, unless other procedure is established by an agreement of the Republic of Kazakhstan with the appropriate party. No visas are required for citizens of CIS member states, except for citizens of Turkmenistan (apart from holders of diplomatic and service passports)<sup>64</sup>.

The articles 6-20 of the law regulate the main rights, freedoms and responsibilities of foreigners in Kazakhstan. According to Article 6, '*foreign citizens, permanently resident in the Republic of Kazakhstan, are entitled the same rights and responsibilities as nationals of the Republic of Kazakhstan*', with the exception of particular cases, which are fixed in the legislation. The analogous rights and responsibilities are entitled to foreign citizens lawfully present in the country, in social and pension security, in the sphere of health protection, in housing, in the realization of the political, cultural and other rights.

The law does not, however, provide a clearly defined mechanism to guarantee the implementation of these rights. For the most part, the law stresses the responsibilities of migrants over their rights. Art. 26 of the law stipulates: '*Foreign citizens who violated regulations of stay in the Republic of Kazakhstan, i.e. residing without a residence permit or residing under invalid documents, failing to comply with the established procedure for registration or travel and choosing a residence, evading departure after their defined period of stay expires, as well as failing to comply with transit travel regulations are subject to administrative responsibility according to the legislation of the Republic of Kazakhstan. Malicious infringement by foreign citizens of regulations of stay in the Republic of Kazakhstan and transit travel through the territory of the Republic of Kazakhstan results in*

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<sup>64</sup> International migration in Kazakhstan, Analytical Report, 2004

*criminal liability stipulated by the legislation of the Republic of Kazakhstan’.*

Each foreigner who fails to register with the local migration office within 5 days is categorised as an illegal migrant. Suspected illegal immigrants may be detained for two days, brought to court, charged with a fee and face deportation afterwards. Once a migrant has been deported this person may face difficulties upon a subsequent attempt to enter Kazakhstan, as his/her passport bears the stamp “‘deported’”.

According to Art. 28 foreigners can be expelled from Kazakhstan for a variety of reasons, among others if the legislation on legal status of foreign citizens in Kazakhstan, customs, currency and other legislation of Kazakhstan have been violated. Moreover, Art. 28 on the extradition of foreigners allows any official body to consider itself an empowered one to extradite foreigners.

Unlike Russian Federation’s law the present Kazakh law states that foreigners are free to travel everywhere except to the restricted territories. In addition, international conventions that were signed by Kazakhstan also stipulate freedom of movement in the country.

There are other legislation documents of Kazakhstan that discuss illegal migration. Some of the relevant provisions in the Criminal Code (No. 167 of 16 July 1997) include regulations on the Deliberate Illegal Crossing of the State Border of the Republic of Kazakhstan (Article 330, 338), Failure to Implement a Decision on Expulsion (Article 330-1 339), Organisation of Illegal Migration (Article 330-2 340) and Multiple Violation of the Rules for Invitation and Use in the Republic of Kazakhstan of Foreign Manpower (Article 330-3 341).

### *Regional agreement on combating irregular migration*

In the framework of the ‘Agreement on Co-operation of Member States of the Commonwealth of Independent States in the fight against irregular Migration’ of 6 March 1998 Kazakhstan has agreed among other CIS countries - Azerbaijan, Armenia, Belarus, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan and Ukraine to enforce joint actions in the area of the fight against irregular migration. These include control of migration processes, the registration of irregular migrants and unwanted foreigners and the exchange of related data, the development of a deportation mechanism, the harmonisation of national legislation in this field, etc.

Republic of Kazakhstan did not ratify the MWC, nor did it ratify the ILO Conventions №97 on Migration for Employment (revised) (1949) and №143 (1975) on Migrations in Abusive Conditions.

### 4.1.2.3 Institutional framework

The Migration Police, in co-operation with the Committee of National Security, combats illegal migration in Kazakhstan. However, the Migration Police is responsible only for apprehensions of illegal migrants on Kazakh territory, while countering illegal border crossings is within the responsibility of the Border Guards.

The Institute of Ombudsman was established in Kazakhstan in 2002. The ombudsman has six priority areas of activities, among which are the protection of the rights of women, children, pensioners, and prisoners. The problems of migrants and refugees at present are not seen as priority ones. However it might be possible for the ombudsman to proceed with the appeals of migrant workers concerning violations of social rights.

#### *Conclusive remark*

Both Russia and Kazakhstan have some common dilemmas, such as demographic decline and aging population. Kazakhstan has tried to return ethnic Kazakhs during the last decade, but the majority of Kazakhstan's population growth is currently the result of illegal migration into Kazakhstan from the rest of Central Asia.

Although Kazakhstan like Russian Federation toughens its border controls, and restricts irregular migration, the overall attitudes to immigrants in Kazakhstan is different from that of Russia's. According to the Analytical Report conducted in Kazakhstan, '*... those who treat emigration positively also would welcome immigrants to Kazakhstan. At the same time, those who see emigration as a negative process nevertheless do not demonstrate a blatant phobia towards immigrants to Kazakhstan. Their uncertainty reflects the general economic and political situation in the country. There are no extreme forms of phobia such as skinheads or other neo-fascist movements in Kazakhstan; for decades people in general are accustomed to living in a multicultural environment*'<sup>65</sup>. If, for some political reasons, the Government of Kazakhstan will not use illegal migrants as scapegoats, for example fearing '*colour revolutions*' and deporting migrants or not allowing them to enter the country, it can be said that both Kazakh people and migrant workers mutually benefit from immigration. If, Kazakhstan wants to remain a multi-ethnic country it should probably consider the possibility of having more than only a mono-ethnic immigration policy. Opening up additional legal migration options would help reduce irregular migration and the problems connected with it, including human trafficking etc.

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<sup>65</sup> International migration in Kazakhstan, Analytical Report, 2004

# Conclusions

As a complex phenomenon irregular migration has no universally accepted definition. But it is generally assumed by labour rights and human rights experts that using the term 'illegal migrant' criminalizes migrant workers and in fact, prevents them from enjoying their human rights. Therefore in defining migrant policies and legislation it is vital for national governments to understand that irregular migration is actually caused by the laws to control migration, and therefore it is necessary to avoid passing '*draconian*' laws.

In the context of the CIS countries, irregular migration is the cause of unreasonable administrative barriers to legalise employment and imperfect legislation leading to violation of human rights of migrant workers.

Even in international arena, there are no special rules for irregular migrants with the exception of the norms of the recently adopted CMW. The CMW, however, is not ratified by major migrant receiving countries. Therefore it is important to look at the existing and accepted human rights norms applicable to all human beings, especially the principle of equal treatment and non-discrimination as set out in international and regional legal norms.

Within the CIS regions, the instruments regulating migration (visas, residence permits, expulsion, etc) of the migrant receiving countries have proved hard to apply without violating fundamental human rights of irregular migrants.

As the case of Russian Federation illustrates, for Russia as a major migrant receiving country, dealing with irregular migration in a civilized manner and protecting migrant workers is as complicated as it is expensive. Protecting migrant workers means more state obligations (in the sense of health insurances, education etc.), which Russia shall not take due to her own shortcomings in the social sectors. Despite the fact that Russia benefits from attracting high-skilled labour from its neighbours, as well as low-wage labour to fill gaps in its labour force, it's current migration policy pays scant attention to individual rights and does little to try to counter and minimise discrimination against foreign workers on the grounds of ethnicity. The law on the legal status of foreigners in Russia has limited the possibilities for legal residence of foreign labour migrants on the territory of the Russian Federation as well as their legal employment by employers. Obtaining work permissions is extremely complicated, and often expensive, even where quotas exist. It is subject to corruption on a large scale at every level of the process. And no special preference has been provided for migrants from the CIS states.

For the time being measures taken by CIS states to protect migrant workers are inefficient. Neither the international human rights instruments nor the

regional agreements are properly implemented within the CIS. Differences in the approaches to problems of external migration are evident in the CIS countries.

Russia's disregard of international human rights instruments protecting aliens, puts a stress on her to respect, ensure and protect these rights to all aliens in her territory including regular and irregular migrant workers. It is vital for Russian Federation to take into account the realities of the migration process, and the situation with both regular and irregular migrant workers from Tajikistan. There is a need to take measures to ensure the actual implementation of the labour agreements on protection of migrant workers signed between the CIS countries and international human rights instruments protecting migrant workers.

The national policy and legislation of Tajikistan on migration issues are considered to be liberal ones, however the promotion of out-migration from the country without ensuring protection of their rights and freedoms in the host countries, rise serious human rights concerns. It is vital that Tajikistan first ensures the protection of Tajik migrant workers in the host country and then sends them.

For Kazakhstan it is important to develop migration policies and legislation that are protecting immigrant workers and fill the gaps in its legislation that favours the violations of human rights of migrant workers. It is also necessary to keep the positive attitude of Kazakhstan's population concerning migrant workers in the country, in order to avoid racial intolerances and various kinds of discriminations against migrant workers.

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